

# International Journal of Law Research, Education and Social Sciences

Open Access Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Vageshwari Deswal; Publisher – Sakshi Batham



This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## Capital Punishment: Pros and Cons, Why is it Justified?

Aarya Kumar Jha<sup>a</sup>

<sup>a</sup>Advocate, Delhi High Court, Delhi, India

Received 20 May 2024; Accepted 22 June 2024; Published 26 June 2024

---

*The implementation of capital punishment, sometimes known as the death sentence, is a highly debated topic in the international criminal justice sphere. This abstract explores the execution of the death sentence in India and assesses its benefits and drawbacks, aiming to clarify its justification. The possible advantages of death punishment in India include its ability to act as a deterrent, provide a feeling of justice for both victims and society and serve as a symbolic means of vengeance for very heinous offenses. Advocates argue that it serves as a powerful tool for deterring potential offenders and guaranteeing the safety of the general population. Furthermore, it is widely held that it satisfies the criteria for retributive justice, offering a feeling of closure to the families of the victims and delivering a strong message about the seriousness of certain crimes. However, the disadvantages of capital punishment in India include the potential for executing innocent individuals, the possibility of bias in its application due to social and economic disparities, and the ethical dilemma of denying someone's right to life. Detractors argue that the criminal justice system is vulnerable to mistakes, and the application of irrevocable punishment might lead to permanent errors, thereby making death punishment fundamentally faulty. It is crucial to conduct a comprehensive examination of the effectiveness, fairness, and ethical implications in order to understand the reasons for implementing death punishment in India. The purpose of this article is to provide a neutral evaluation of the benefits and drawbacks of death punishment, enabling a deeper understanding of the complex dynamics involved in its use within India's legal system.*

**Keywords:** *criminal law, death punishment, justice system, ipc.*

## **INTRODUCTION**

The Indian penal code does not provide a specific definition for the term in question. Section 53 of the code outlines the various forms of punishment, including the death penalty, which is reserved for only the most exceptional circumstances. Offences can be classified into two distinct categories, namely simple and rigorous punishment. Criminal activity is a pervasive issue worldwide, and in nations such as India, where crime rates are notably high, measures must be taken to combat these offences and safeguard our communities. The commission of egregious criminal acts poses a significant threat to societal well-being and cannot be condoned. In order to uphold public safety and security, it is imperative that criminals be held accountable for their actions through punitive measures. Capital punishment, reserved for the most severe and atrocious crimes against humanity, such as criminal conspiracy, murder, insurrection against the government, and murder during the commission of a robbery, is a legal penalty under the Indian Penal Code. The clemency of capital punishment can solely be granted by the head of state. As per Article 72, the President is vested with the authority to bestow a pardon or remission, among other powers. Capital punishment in India is executed through the method of hanging until the individual ceases to live.

## **WHAT IS THE RAREST OF RARE CASES?**

The legal principle of 'rarest of rare cases' was established in the *Bachan v State of Punjab* case.<sup>1</sup> The highest court in the country aimed to clarify the circumstances under which the most severe penalty in the legal system should be imposed by introducing a doctrine for offences that carry the death penalty. As per the ruling of the Supreme Court, the constitutionality of the death penalty must be upheld solely in instances that are deemed to be the most exceptional and uncommon. Nevertheless, the precise boundaries of this concept have not been established. According to the Ratio Decidendi of the Bachan Singh case, the constitutionality of the death penalty is contingent upon its prescription as a substitute for the death penalty in cases of murder, where the punishment for murder is life imprisonment. The imposition of the death penalty is restricted to exceptional circumstances where no viable alternative is available.

---

<sup>1</sup> *Bachan v State of Punjab* (1982) 3 SCC 24

Subsequently, in the case of *Macchi Singh v State of Punjab*<sup>2</sup>, ‘the highest court of the land established a set of standards to ascertain whether a criminal offence could be classified as belonging to the category of rarest of rare. As per the verdict of the Supreme Court in the case of *Santosh Kumar Bariyar v State of Maharashtra*<sup>3</sup>, the principle of *rarest of rare* serves as a guiding principle for the implementation of Section 354(3), which establishes that life imprisonment is the general rule and capital punishment is the exception.’ According to Section 303 of the Indian Penal Code, individuals who have been sentenced to life imprisonment are also subject to the death penalty. Consequently, this particular segment was deemed to be in violation of the Constitution. The year 2008 marked the judicial ruling on the notion of a rarest of rare cases in the legal matter of *Prajeet Kumar Singh v State of Bihar*. As per the ruling of the Supreme Court, capital punishment may only be imposed in cases where a homicide has been committed in a manner that is deemed ruthless, grotesque, diabolical, revolting, or dastardly, and which elicits a strong and profound sense of resentment within the community.

The concept of ‘rarest of the rare cases’ pertains to exceptional circumstances that cannot be overlooked by the court in the interest of justice for the victim. It is incumbent upon the court to ensure that justice is served for the aggrieved party and to safeguard society from the malevolent perpetrator, thereby upholding the principles of justice.

### **PROS OF THE CAPITAL PUNISHMENT**

The implementation of the death penalty is considered essential to protect society from those who have shown a lack of empathy and respect for human life, considering people as simple machines. By imposing penalties on such persons, the security of society can be guaranteed. This will act as a deterrent for future wrongdoers since it sets a precedent that engaging in such serious offenses will lead to an understanding of the consequences involved.

The application of the death penalty is considered essential in deterring the continuation of criminal acts. Research results suggest that the lack of this kind of punishment leads to an increase in crime rates, but its implementation is linked to a reduction in criminal activities. This implies that the implementation of penalties acts as a preventive measure for prospective

---

<sup>2</sup> *Macchi Singh v State of Punjab* 1983 AIR 957

<sup>3</sup> *Santosh Kumar Bariyar v State of Maharashtra* (2009) 6 SCC 498

wrongdoers, therefore fostering the welfare of society and bolstering the protection of the country against criminal elements.

While incarcerated, convicts may escape from correctional institutions, leading to further criminal behaviour and an incomplete fulfillment of their sentence. This result is inequitable to the victim and weakens the functioning of the legal system. When criminals manage to avoid being caught, they tend to have a tendency to commit more crimes, which in turn puts the community in danger. Committing a crime endangers society, and it is our responsibility to maintain justice by ensuring that the perpetrator is held responsible for their acts and given to suitable punishment.

### **CONS OF THE CAPITAL PUNISHMENT**

Capital punishment, commonly known as the death penalty, is often regarded by a significant number of individuals as a form of punishment that is inhumane. Critics argue that it is tantamount to murdering the offender, thereby perpetuating a cycle of violence that is unceasing and ultimately counterproductive. As such, it is widely believed that this approach is not a viable solution to addressing criminal behaviour.

In certain circumstances, the judiciary may render an erroneous verdict due to the presence of fabricated or insufficient evidence, resulting in the conviction of an innocent individual. Unfortunately, such a decision cannot be reversed, even if the individual is later proven innocent. This can result in the loss of an innocent life, which cannot be remedied. However, if the individual is incarcerated, their life can be preserved, and if they are subsequently exonerated, they can be released and compensated accordingly. Although he cannot regain the time lost, he can at least continue to live the remainder of his life.

In certain cases, an offender may lack the cognitive ability to comprehend the consequences of their actions. In such instances, rehabilitation and consultation sessions may be more appropriate than immediate punishment, as executing such individuals would be unjust given their lack of *mens rea* at the time of the offence. Consequently, individuals who merit a prospect of life are deprived of the possibility to achieve it via the implementation of capital punishment. The notion of terminating an individual's existence appears to deviate from societal norms. Apart from its violent nature, such a form of punishment is also deemed to be uncommon and

inhumane. While it is important to hold offenders accountable for their actions, a viable alternative to capital punishment is life imprisonment.<sup>4</sup>

## **COURTS INTERPRETED THE CONCEPT OF CAPITAL PUNISHMENT AND ITS VALIDITY**

Article 21 of the Indian Constitution guarantees all individuals a fundamental right to life and liberty. The aforementioned amendment delineates that an individual's life and liberty cannot be deprived without due process of law. As per this particular interpretation, it is within the purview of the state to deprive an individual of their life, provided that there exists a just and legitimate process for doing so. In addition to affirming the constitutional soundness of capital punishment in exceptional circumstances deemed as the 'rarest of rare,' the Supreme Court has validated the constitutional soundness of capital punishment in instances where the federal government asserts that it serves as a preventive measure against individuals who endanger the welfare of society. The constitutionality of the death penalty has been upheld by the Supreme Court on three occasions, namely in the cases of *Jagmohan Singh v State of Uttar Pradesh*, *Rajendra Prasad v State of Uttar Pradesh*, and *Bacchan Singh v State of Punjab*. Capital punishment may be imposed upon an individual if it is authorised by the governing laws and if the procedures employed are deemed to be equitable, impartial, and rational. In the Indian legal system, capital punishment is reserved for the most exceptional circumstances, as determined by the courts. In such cases, the courts must provide compelling justifications for their decision, which do not infringe upon the individual's right to life and personal liberty as enshrined in Article 21 of the Constitution. The apex court has established that in certain exceptional cases, the death penalty may be imposed as a means of safeguarding society from heinous crimes and offences that cannot be overlooked. Based on the circumstances of the case and the presented facts, the court determines whether or not to impose the death penalty.

## **WHY CAPITAL PUNISHMENT IS JUSTIFIED?**

In our view, death punishment should be considered justified in some cases and is essential for the protection and safety of society. Punishment acts as a deterrent to society, and the absence of sanctions would probably lead to an increase in criminal activity, enabling criminals to behave

---

<sup>4</sup> 'The Death Penalty Debate' (*Current Legal Issues Forum*, 02 August 2009)  
<<http://currentlegalissues.blogspot.com/2009/08/death-penalty-debate.html>> accessed 22 May 2024

without fear of consequences and perhaps causing a surge in severe criminal behaviour. It is crucial to administer justice to the victim, and the death penalty is a measure that is only used in the most extraordinary situations. The decision to enforce capital punishment is derived from a thorough assessment of all accessible evidence, facts, and contextual elements pertaining to the offense, and is reached after consultation with seasoned legal experts.

The ethical dilemma under examination concerns the intrinsic worth of human life and the rationale for the ongoing existence of persons who commit the act of killing others without proper deliberation. These people pose a possible threat to society. Ensuring the safety and protection of persons is crucial for establishing a secure workplace. The Macchi Singh case revolved around the examination of principles that are relevant to the most exceptional and uncommon instances. These standards considered several aspects like the method of the crime, the underlying motivation, the level of antisocial or repugnant behaviour shown, the proportionality of the crime, and the magnitude of damage caused to the victims.

### **HOW IS IT IMPORTANT TO PROTECT OUR SOCIETY?**

Ensuring the protection of our society is of utmost importance due to the possible threat it presents to our overall welfare. The violation of personal liberty by wrongdoers may hinder persons' capacity to live their lives without constraints. Ensuring the absence of criminal activity is crucial for allowing individuals to go out of their everyday routines without any apprehension. The court is responsible for protecting society from the cruel and violent crimes committed by criminals. The victim has a basic right to get justice. Ensuring the survival of the human race and delivering a warning about the repercussions of their actions are essential mandates. It is anticipated that the execution of this action would lead to a decrease in crime rates and an enhancement in the general environment. This would foster a feeling of safety and reassurance among the general population, as they would have trust in the effectiveness of the legal system and the responsibility of wrongdoers.

In nations such as India, where instances of rape and homicide have escalated and become more prevalent, it is imperative to implement severe penalties, such as capital punishment, as a means of safeguarding the populace. Individuals may experience a reduction in fear or uncertainty regarding their safety within their nation. Therefore, capital punishment is deemed necessary in specific instances where it is imperative to ensure justice for both society and the victim.

Individuals who have forfeited their humanity should not be permitted to continue living as criminals.

## **CONCLUSION**

Capital punishment, commonly referred to as the death penalty, is a controversial topic. From my perspective, the use of the death penalty is warranted as a means of safeguarding and protecting society. The highest court has established the principle of the 'rarest of rare cases' and provided criteria for determining the appropriate punishment. Furthermore, it has been asserted that Article 21<sup>5</sup> is not being contravened. It is imperative for individuals who engage in criminal activities to be aware of the potential repercussions. Reducing crime rates is an essential objective to consider. It is imperative that there be no undue lapse of time between the issuance of a capital punishment verdict and its subsequent implementation. Capital punishment is a severe form of penalty that is exclusively reserved for the most atrocious or exceptional cases.

---

<sup>5</sup> Constitution of India 1950, art 21